Supreme Court, U.S.
FILED

01-90 JUL 17 2001

OFFICE OF THE CLERK

No. ____

IN THE

Supreme Court of the United States

REV. NOAH BROUGHTON, REV. EARL OWENS, REV. RON LITTLE, REV. BILLY MILLER, REV. JAMES LOCKARD, REV. ROBERT FLYNN, REV. JAMES MILLS, REV. STUART MASON, REV. CHARLES BULLOCK, REV. DAVID CARR, REV. KENNETH NICHOLS, REV. CHARLES PRATER, REV. CLINT KEITH, and PRINCIPAL DAN COGGINS,

Petitioners,

v.

PULASKI FISCAL COURT,

Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Kentucky

PETITION FOR WRIT OF CERTIORARI

A. C. DONAHUE
DONAHUE LAW GROUP, P.S.C.
203 West Mt. Vernon Street
Legal Office Building, Ste. 102
Somerset, KY 42502-0659
(606) 677-2741

DAVID C. GIBBS, JR.
Counsel of Record
DAVID C. GIBBS III
CHARLOTTE A. COVER
GIBBS LAW FIRM, P.A.
5666 Seminole Boulevard, Suite 2
Seminole, FL 33772
(727) 399-8300

Counsel for Petitioners

WILSON-EPES PRINTING CO., INC. – (202) 789-0096 – WASHINGTON, D. C. 20001

QUESTIONS PRESENTED FOR REVIEW

The Supreme Court of Kentucky has refused to review a judgment declaring Respondent's occupational license tax on "the privilege of exercising the right to engage in an occupation" to be constitutional as applied to thirteen ministers and a parochial school principal who are exercising their rights to the free exercise of religion, speech, press, and expression in Pulaski County. This declaration of the constitutionality of Pulaski Fiscal Court's occupational license fee ordinances as applied to Petitioners raises an important question that warrants review by this Court:

1. Whether the First and Fourteenth Amendments to the United States Constitution prohibit the Pulaski Fiscal Court from taxing the exercise of their freedoms of religion, speech, press, and expression in Pulaski County, Kentucky.

PARTIES TO THE PROCEEDINGS

Petitioners

Rev. Noah Broughton, Rev. Ron Little, Rev. Billy Miller, Rev. Robert Flynn, Rev. James Mills, Rev. Stuart Mason, Rev. David Carr, Rev. Kenneth Nichols, Rev. Charles Prater, Rev. Earl Owens, Rev. James Lockard, Rev. Charles Bullock, Rev. Clint Keith, and Dan Coggins. Petitioners are individuals, not corporate entities. *See* Supreme Court Rule 14.1(b) and 29.6.

Respondent

Pulaski Fiscal Court

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED FOR REVIEW	i
PARTIES TO THE PROCEEDINGS	ii
TABLE OF AUTHORITIES	v
PETITION FOR A WRIT OF CERTIORARI	1
OPINIONS BELOW	1
JURISDICTION	2
CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED	2
STATEMENT OF THE CASE	2
STATUTORY PROVISIONS	2
I. THE UNDERLYING LITIGATION	2
A. The Criminal Action Against Rev. Noah Broughton	2
B. The Declaratory Action Brought by Rev. Noah Broughton, *et al.*	3
II. POLASKI FISCAL COURT OCCUPATIONAL LICENSE TAX SCHEME	5
A. Polaski Fiscal Court Ordinance 220.9	5
B. Polaski Fiscal Court Ordinance 220.22	5
REASONS FOR GRANTING THE WRIT	6
I. REVIEW OF THIS CASE IS WARRANTED BECAUSE THE DECISIONS BELOW DISREGARDED CONSTITUTIONAL LIMITATIONS GOVERNING THE TAXATION OF THE EXERCISE OF PRIVILEGES PROTECTED BY THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION	6

TABLE OF CONTENTS—Continued

Page

II. REVIEW IS WARRANTED BECAUSE THE DECISION BELOW CONFLICTS WITH THIS COURT'S PRECEDENT AND DOES NOT PROTECT RELIGIOUSLY MOTIVATED ACTIONS THAT INVOLVE THE FREE EXERCISE CLAUSE IN CONJUNCTION WITH OTHER CONSTITUTIONAL PROTECTIONS 9

CONCLUSION 12

TABLE OF AUTHORITIES

CASES: Page

City of Louisville v. Sebree, 214 S.W.2d 248 (Ky. 1948) 7
Commissioners of the Sinking Fund of the City of Louisville v. Hopson, 613 S.W.2d 621 (Ky. Ct. App. 1981), *aff'd, Hopson v. Commissioners of the Sinking Fund of Louisville*, 613 S.W.2d 619 (Ky. 1981), *cert. denied*, 454 U.S. 826 (1981) 6, 8
Commissioners of Sinking Fund of City of Louisville v. Howard, 248 S.W.2d 340 (Ky. 1952), *aff'd* 344 U.S. 624 (1953) 6, 7
Employment Division v. Smith, 494 U.S. 872 (1990) 10, 11
Follett v. Town of McCormick, S.C., 321 U.S. 573 (1944) 1, 8, 9
Murdock v. Pennsylvania, 319 U.S. 105 (1943) .. 9, 10-11
Patrick v. City of Frankfort, 539 S.W.2d 275 (Ky. 1976) 7

CONSTITUTIONAL PROVISIONS:

U.S. CONST. amend. I ..... *passim*
U.S. CONST. amend. XIV 1

STATUTORY PROVISION:

Pulaski Fiscal Court Ordinance 220.9 ..... *passim*
Pulaski Fiscal Court Ordinance 220.22 ..... *passim*

PETITION FOR A WRIT OF CERTIORARI

Petitioners Rev. Noah Broughton, Rev. Ron Little, Rev. Billy Miller, Rev. Robert Flynn, Rev. James Mills, Rev. Stuart Mason, Rev. David Carr, Rev. Kenneth Nichols, Rev. Charles Prater, Rev. Earl Owens, Rev. James Lockard, Rev. Charles Bullock, Rev. Clint Keith, and Dan Coggins respectfully pray that a writ of certiorari issue to review the order of the Kentucky Supreme Court denying discretionary review of the Kentucky Court of Appeals's Opinion Affirming the imposition of an unconstitutional tax upon Petitioners. The Pulaski Fiscal Court, contrary to the protections guaranteed by the First and Fourteenth Amendments to the United States Constitution as construed by this Court, seeks to tax Petitioners for preaching or engaging in religious education in Pulaski County. This Court has clearly held that the fact that preachers may not be free from general taxation "does not mean that they can be required to pay a tax for the exercise of that which the First Amendment has made a high constitutional privilege." *Follett v. Town of McCormick, S.C.*, 321 U.S. 573, 578 (1943). The Kentucky Supreme Court's decision therefore involves issues of federal importance.

OPINIONS BELOW

The Order of the Supreme Court of Kentucky denying motion for discretionary review is *Noah Broughton, et al. v. Pulaski Fiscal Court*, No. 2000-SC-0980-D, (April 18, 2001), is unpublished and is reprinted in the Appendix to this Petition, at App. 1a.

The decision of the Commonwealth of Kentucky Court of Appeals is *Rev. Noah Broughton; Rev. Earl Owens, Rev. Ron Little; Rev. Billy Miller; Rev. James Lockard; Rev. Robert Flynn; Rev. James Mills; Rev. Stuart Mason; Rev. Charles Bullock; Rev. David Carr; Rev. Kenneth Nichols; Rev. Charles Prater; Rev. Clint Keith, Dan Coggins v. Pulaski Fiscal Court*, No. 1999-CA-002136-MR, (September 29,

2000), is unpublished and is reprinted in the Appendix to this Petition, at App. 2a-6a.

The decision of the Pulaski Circuit Court, Division II, is *Noah Broughton, et al. v. Pulaski Fiscal Court*, Civil Action No. 99-CI-00345 (28th Judicial Circuit, Commonwealth of Kentucky), (July 6, 1999), is unreported and is reprinted in the Appendix to this Petition, at App. 7a-12a.

JURISDICTION

The order of the Kentucky Supreme Court denying discretionary review was entered on April 18, 2001, (App. 1a). The jurisdiction of this Court rests upon 28 U.S.C. § 1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS

United States Constitution

The First Amendment to the United States Constitution provides, in relevant part: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press."

STATUTORY PROVISIONS

Pursuant to this Court's Rule 14.1(f), the provisions of Pulaski Fiscal Court Ordinances involved in this case, including Pulaski Fiscal Court Ordinances 220.9 and 220.22, are set forth at App. 16a.

STATEMENT OF THE CASE

I. THE UNDERLYING LITIGATION

A. The Criminal Action Against Rev. Noah Broughton

In 1996 and 1997, the Commonwealth of Kentucky charged Rev. Noah Broughton criminally for failure to pay occupation taxes and to withhold employee wages or submit a

listing of employees pursuant to County Ordinances 220.9 and 220.22 for the 1992 through 1997 tax years. Rev. Broughton raised his Kentucky and United States constitutional defenses to both of those criminal actions. In April 1998, the consolidated 1996 and 1997 cases were dismissed pursuant to an Agreed Order by which Rev. Broughton would file the appropriate occupation tax returns and pay any occupational license taxes due on income from sources other than from his duties as Pastor of Saline Baptist Church. (Agreed Order, App. 13a-15a).

The Commonwealth and Rev. Broughton also agreed that he would pay into an escrow account the occupational license taxes due on compensation he received for the performance of his pastoral duties. Pursuant to the Agreed Order, Rev. Broughton had twelve months in which to file a declaratory action in Circuit Court to seek a declaration of his rights as a minister with regard to the imposition of an occupational license tax on his constitutional privilege to carry out his ministerial calling. If he did not file, or if he did file but did not prevail in his declaratory action, the escrowed taxes would be paid to the Occupational Tax Administrator. If he prevailed in the action, the money was to be refunded to him.

B. The Declaratory Action Brought by Rev. Noah Broughton, *et al.*

Rev. Broughton, along with thirteen other pastors, youth ministers, evangelists, and a Christian school teacher purportedly subject to the Occupational License Fee, filed a declaratory judgment action before the Pulaski Circuit Court seeking a declaration as to the constitutionality of Pulaski Fiscal Court's occupational tax and license fee ordinances as applied to the exercise of their religious duties, raising both First Amendment and Kentucky constitutional issues. It is this declaratory judgment with regard to Petitioners' First Amendment claims that is now before this Court.

As pastors, assistant pastors, evangelists, and youth ministers in Pulaski County, the duties performed by the Petitioners include delivering sermons at religious worship services at church; leading the church congregations in Bible studies; administering in their churches the two New Testament ordinances of baptism and communion; promoting the spiritual growth of the members of the churches through the preaching and teaching of God's Word; carrying on the evangelization of Pulaski County by a door-to-door visitation program, including the distribution of Gospel tracts; and promoting Christian education among the church's youth. As the Principal of a parochial school in Pulaski County, the duties of Dan Coggins include imparting an inseparably intertwined religious and academic education to the students of the Academy and inculcating religious values and beliefs in the students by teaching every subject from a Biblical viewpoint. All Petitioners receive a wage, salary, or compensation in return for their engaging in their religious callings in Pulaski County.

In 1999 the Pulaksi Circuit Court entered its Findings of Fact, Conclusions of Law, and Declaratory Judgment in favor of Respondent. The Circuit Court concluded as a matter of law that the Ordinances were constitutional, both on their face and as applied. (App. 7a-12a).

After Petitioner's timely Motion to Alter, Vacate, or Amend was overruled they appealed the Circuit Declaratory Judgment to the Kentucky Court of Appeals. By its September 29, 2000, Opinion Affirming, the Court of Appeals affirmed the judgment of the Circuit Court. (App. 2a-6a). On April 18, 2001, the Supreme Court of Kentucky entered an Order Denying Discretionary Review of the decision of the Court of Appeals. (App. 1a).

II. PULASKI FISCAL COURT OCCUPATIONAL LICENSE TAX SCHEME

A. Pulaski Fiscal Court Ordinance 220.9

Pulaski Fiscal Court Ordinance 220.9 Sections III(a) and (b), in effect until 1996, provided that "[a]ll persons engaged in any trade, occupation or profession within Pulaski County," for themselves or as employees, "shall pay a license fee measured by and equal to one percent (1%)" of gross receipts or net profits realized from such activity. The Ordinance defined a license fee as "a tax imposed for the privilege of exercising the right to engage in trade, occupation or profession for compensation paid by others or the right to engage in trade, occupation, or profession for oneself, for profit or gain, within Pulaski County," and made it "unlawful for any person to engage in any trade, occupation or profession within Pulaski County without withholding, reporting and paying the license fees herein provided and required." The Ordinance authorized the imposition of interest and penalties and/or criminal sanctions amounting to not less than $50 nor more than $500 and/or imprisonment for up to twelve months for its violation.

B. Pulaski Fiscal Court Ordinance 220.22

Pulaski Fiscal Court's Ordinance 220.22, which became effective in 1996, purports to require every person or business "engaged in any trade, occupation, or profession, or other activity" to complete and file an Occupational Tax Office questionnaire "*before* the commencement of business . . ." (Ord. 220.22, Section 1.02(A) (emphasis added)). Section 1.02(B) requires

> [e]very natural person . . . engaging in any activity for profit, or filing Kentucky Income Tax forms 740, 741, 765, 720 or 720S, . . . to file and pay to the Occupational Tax Administrator an annual Occupational License Fee resulting from engaging in each said activity. Said

license fee shall be measured by one percent (1%) of compensation.

The Ordinance defines a "license fee" as "a tax imposed on (a) salaries, wages, commissions and other compensation earned by persons within the county for work done and services performed or rendered in the county . . ." (Section 1.01(11)). The Ordinance imposes interest and penalties for all unpaid license fees and provides for fines of from $50 to $500 and/or imprisonment for up to twelve months for violation of the Ordinance.

REASONS FOR GRANTING THE WRIT

I. REVIEW OF THIS CASE IS WARRANTED BECAUSE THE DECISIONS BELOW DISREGARDED CONSTITUTIONAL LIMITATIONS GOVERNING THE TAXATION OF THE EXERCISE OF PRIVILEGES PROTECTED BY THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION.

The question before this Court is whether in Kentucky a minister or religious teacher engaged in the exercise of his rights to the free exercise of religion and the freedoms of speech, press, and expression may be taxed for the privilege of that exercise, or whether the First Amendment to the U. S. Constitution protects those activities. Although this Court has had occasion to consider whether Kentucky may impose a privilege tax upon occupations engaged in by federal employees [1] or state constitutional officers,[2] it has never had opportunity to consider whether the exercise of privileges protected by the First Amendment to the U. S. Constitution may be so taxed.

---

[1] *Commissioners of Sinking Fund of City of Louisville v. Howard*, 248 S.W.2d 340 (Ky. 1952), *aff'd*, 344 U.S. 624 (1953).

[2] *Hopson v. Commissioners of Sinking Fund*, 613 S.W.2d 619 (Ky. 1981), *cert. denied*, 454 U.S. 826 (1981).

More than fifty years ago the Kentucky Court of Appeals, the high court of the state at that time, expressly held that a license tax, identical to those levied herein, is not an income tax in violation of the state constitution, but is a tax upon the privilege of engaging in a profession or occupation within a city or county that merely measures the value of the privilege by the earnings or profit received for the exercise of the privilege. *City of Louisville v. Sebree*, 214 S.W.2d 248, 253 (Ky. 1948). Ever since *Sebree*, Kentucky courts considering similar taxes have consistently held that occupational license taxes are not income taxes but are taxes upon the privilege of engaging in a trade, occupation, or profession within an governmental jurisdiction. *See e.g., Commissioners v. Howard*, 248 S.W.2d 340 (Ky. 1952), *aff'd*, 344 U.S. 624 (1953) and *Patrick v. City of Frankfort*, 539 S.W.2d 275 (Ky. 1976).

The *Howard* and the *Patrick* decisions reaffirmed *Sebree's* holding that the occupation license tax is not an income tax, but "is a license tax which 'measures the value of the privilege by the amount of earnings or profits.'" *Howard*, 248 S.W.2d at 342, *quoting Sebree*, 214 S.W.2d at 253. This Court itself relied upon the *Sebree* holding that the occupational license tax "was a tax upon the privilege of working within the City of Louisville." *Howard*, 344 U.S. at 628. *See also Patrick*, 539 S.W.2d at 278, *quoting Howard*, 344 U.S. at 628, and *Sebree*, 214 S.W.2d at 253.

The occupational license tax imposed upon Petitioners by the Pulaski Fiscal Court clearly falls within the *Sebree* line of cases, making the tax a tax upon the Petitioners' privilege of engaging in their religious callings as pastors or associate pastors of churches, evangelists, youth ministers, or administrators of church schools in Pulaski County. Although the measure of the value of the privilege being exercised may be the salary received, the tax itself is upon the privilege of exercising protected First Amendment rights in Pulaski

County. Therefore, as to Petitioner Pastors the ordinances tax the First Amendment privileges of delivering sermons; leading church congregations in Bible studies; baptizing converts; administering the church ordinance of communion; evangelizing Pulaski County by a door-to-door visitation program, including the distribution of Gospel tracts; and promoting Christian education among the church's youth. All these activities are privileges protected by the First Amendment to the U. S. Constitution; they may not be taxed.

While it is true that federal and state workers are subject to occupation taxation, there is a clear distinction between charging a federal worker or a state judge for the privilege of carrying out his federal or state responsibilities and charging a preacher for the privilege of preaching from his pulpit. As sovereigns, the United States and the Commonwealth of Kentucky may waive so much of their sovereignty as to permit a tax to be imposed by the county upon the exercise of federal and state functions. The federal government has waived that much sovereignty by means of *e.g.*, the Buck Act.[3] The Commonwealth has waived that much of its sovereignty with regard to state officers and employees. *Commissioners of the Sinking Fund of the City of Louisville v. Hopson*, 613 S.W.2d 621 (Ky. Ct. App. 1981), *aff'd, Hopson v. Commissioners of the Sinking Fund of the City of Louisville*, 613 S.W.2d 619 (Ky. 1981), *cert. denied*, 454 U.S. 826 (1981).

In contrast, this Court has held that preachers, however unorthodox, may not "be required to pay a tax for the exercise of that which the First Amendment has made a high constitutional privilege." *Follett v. Town of McCormick*, 321 U.S. 573, 578, (1944). That means that although the Commonwealth and the Federal Government may waive their

---

[3] "The grant [to levy the occupational tax upon federal employees] was given within the definition of the Buck Act." *Howard v. Commissioners of Sinking Fund of City of Louisville*, 344 U.S. at 629 (1953).

own sovereignty, the privilege of exercising a right guaranteed by the First Amendment may not be waived by the Commonwealth. "The privilege in question exists apart from state authority." It even exists apart from federal authority. "It is guaranteed [not bestowed upon] the people by the Federal constitution." *Murdock v. Pennsylvania*, 319 U.S. 105, 115, (1943). Therefore "[a] state may not impose a charge for the enjoyment of a right granted by the federal constitution." *Id.*, at 113.

If the tax is truly a tax on the privilege of engaging in a profession and merely measures the value of the privilege by the earnings received for the exercise of the privilege as *Sebree* and it progeny declares, then this Court's review of the decision below is warranted because the Kentucky Supreme Court has disregarded the *Murdock* and *Follett* holdings that prohibit a state from taxing the exercise of that which the First Amendment protects as a high constitutional privilege. *Follett*, 321 U.S. at 578. The question of whether Respondent may constitutionally tax pastors and religious teachers for performing the religious duties of their positions is of grave importance to these Petitioners and to others similarly situated.

II. REVIEW IS WARRANTED BECAUSE THE DECISION BELOW CONFLICTS WITH THIS COURT'S PRECEDENT AND DOES NOT PROTECT RELIGIOUSLY MOTIVATED ACTIONS THAT INVOLVE THE FREE EXERCISE CLAUSE IN CONJUNCTION WITH OTHER CONSTITUTIONAL PROTECTIONS.

The trial court and Kentucky Court of Appeals held in essence that the occupational license fees are valid because they are neutrally applied to all occupations in Pulaksi County. This Court has held, however, that even a "neutral, generally applicable law" may be inapplicable to activities

that involve more than one constitutional privilege. In *Employment Division v. Smith,* 494 U.S. 872 (1990), this Court expressly stated an intention to continue to review even "neutral laws of general applicability" in the face of First Amendment claims if the religious claims are raised together with other constitutionally protected claims. The Court used as examples of such constitutionally protected hybrid claims the cases of, among others, *Murdock* and *Follett.*

> The only decisions in which we have held that the First Amendment bars application of a neutral, generally applicable law to religiously motivated action have involved not the Free Exercise Clause alone, but the Free Exercise Clause in conjunction with other constitutional protections, such as freedom of speech and of the press, see Cantwell v. Connecticut, 310 U.S., at 304-307, 60 S.Ct., at 903-905 (invalidating a licensing system for religious and charitable solicitations under which the administrator had discretion to deny a license to any cause he deemed nonreligious); *Murdock v. Pennsylvania*, 319 U.S. 105, 87 L.Ed. 1292, 63 S.Ct. 870, 146 A.L.R. 81 (1943) (invalidating a flat tax on solicitation as applied to the dissemination of religious ideas); *Follett v. McCormick,* 321 U.S. 573, 88 L.Ed. 938, 64 S.Ct. 717, 152 A.L.R. 317 (1944) (same) . . . ."

Smith, 494 U.S. at 881.

This Court was blunt in its *Murdock* pronouncement that the neutral, generally applicable nature of the ordinance before it could not save the license tax from its invalidity.

> The fact that the ordinance is "nondiscriminatory" is immaterial. The protection afforded by the First Amendment is not so restricted. A license tax certainly does not acquire constitutional validity because it classifies the privileges protected by the First Amendment along with the wares and merchandise of hucksters and peddlers and treats them all alike. Such equality in treatment does not save the ordinance.

> Freedom of press, freedom of speech, freedom of religion are in a preferred position.

Murdock, 319 U.S. at 115.

Murdock expressed the general principle that the activities carried out pursuant to privileges protected by the First Amendment are in a preferred position to other activities. Petitioners raised the hybrid claims of freedom of press, speech, expression, and religion in their challenge to the County's occupational license fee. These privileges exist apart from state, or even federal, authority. Therefore, while it may be true that Respondent's occupational license tax ordinances are neutral and generally applicable, that fact alone does not resolve the question of whether the tax may be levied on the exercise of privileges guaranteed by the Free Exercise Clause in conjunction with other constitutional protected rights.

The decision below held only that the law was neutral and failed to consider the hybrid nature of those constitutional claims. The decision is therefore in conflict with the *Smith v. Employment Division* and *Murdock* decisions and should be reviewed by this Court.

CONCLUSION

For all the foregoing reasons, Petitioner urges this Court to grant the requested Petition for Certiorari and to resolve the constitutional questions presented in this case in favor of the free exercise of religion and the freedoms of speech, press, and expression.

Respectfully submitted,

A. C. DONAHUE
DONAHUE LAW GROUP, P.S.C.
203 West Mt. Vernon Street
Legal Office Building, Ste. 102
Somerset, KY 42502-0659
(606) 677-2741

DAVID C. GIBBS, JR.
Counsel of Record
DAVID C. GIBBS, III
CHARLOTTE A. COVER
GIBBS LAW FIRM, P.A.
5666 Seminole Boulevard, Suite 2
Seminole, FL 33772
(727) 399-8300

Counsel for Petitioners

APPENDICES

APPENDIX A

SUPREME COURT OF KENTUCKY

2000-SC-0980-D
(1999-CA-2136-MR)
Pulaski Circuit Court
1999-CI-0345

NOAH BROUGHTON, *et al.*,
Movants,

v.

PULASKI FISCAL COURT,
Respondent.

ORDER DENYING DISCRETIONARY REVIEW

The motion for discretionary review of the decision of the Court of Appeals is denied.

ENTERED: April 18, 2001.

/s/ (ILLEGIBLE)
Chief Justice

APPENDIX B

COMMONWEALTH OF KENTUCKY
COURT OF APPEALS

No. 1999-CA-002136-MR

REV. NOAH BROUGHTON; REV. EARL OWENS; REV. RON LITTLE; REV. BILLY MILLER; REV. JAMES LOCKARD; REV. ROBERT FLYNN; REV. JAMES MILLS; REV. STUART MASON; REV. CHARLES BULLOCK; REV. DAVID CARR; REV. KENNETH NICHOLS; REV. CHARLES PRATER; REV. CLINT KEITH; DAN COGGINS,

Appellants,

v.

PULASKI FISCAL COURT

Appellee.

APPEAL FROM PULASKI CIRCUIT COURT
HONORABLE WILLIAM T. CAIN, JUDGE
Action No. 99-CI-00345

OPINION
AFFIRMING

* * * *

BEFORE: HUDDLESTON, MILLER AND TACKETT, JUDGES.

TACKETT, JUDGE: Appellants, Dan Coggins, as well as Revs. Noah Broughton, Earl Owens, Ron Little, Billy Miller, James Lockard, Robert Flynn, James Mills, Stuart Mason, Charles Bullock, David Carr, Kenneth Nichols, Charles Prater, and Clint Keith, appeal from a declaratory judgment issued by the Pulaski Circuit Court. We affirm.

Appellants are persons who receive remuneration from the practice of their religious activities in Pulaski County. All appellants except Coggins are employed as pastors, evangelists, or youth ministers in Pulaski County. Coggins is principal of a religious school in Pulaski County. Appellants filed a declaratory judgment action in the Pulaski Circuit Court against appellee, Pulaski Fiscal Court (Fiscal Court), seeking to have that court find certain Pulaski County Fiscal Court ordinances declared unconstitutional. The ordinances in question, enacted under the auspices of Kentucky Revised Statute (KRS) 68.197, assess a license fee, commonly called an occupational tax, on businesses, trades, occupations, and professions transacting business in Pulaski County. The license fee is assessed as a percentage of wages or net profits earned.[1]

Appellants contended that the license fee violated the free exercise of religion clause of the United States and Kentucky Constitutions. (Specifically, §§ 1, 5 and 8, of the United States and § 181 of the Kentucky Constitution.)[2] Appellants and the Fiscal Court filed motions for judgment on the pleadings. Kentucky Rule of Civil Procedure (CR) 12.03. The

---

[1] The record does not contain copies of the ordinances in question. However, all parties agree as to their relevant contents.

[2] Section one of the Kentucky Constitution protects, *inter alia*, the right of people to worship "Almighty God according to the dictates of their consciences." Section five also protects religious freedom. Section eight protects freedom of speech and of the press. Section 181 of the Kentucky Constitution permits the General Assembly to "delegate the power to counties, towns, cities and other municipal corporations, to impose and collect license fees . . . on franchises, trades, occupations and professions." However, local governments are not permitted to levy local income taxes. *Hopson v. Commissioners of Sinking Fund of City of Louisville*, Ky., 613 S.W. 2d 619, 620 (1981) (Palmore, J., concurring), *cert, denied* 454 U.S. 826, 102 S. Ct. 117, 70 L.Ed.2d 101 (1981). The First Amendment to the United States Constitution protects freedom of religion and freedom of speech.

trial court issued a declaratory judgment finding the ordinances to be constitutional and applicable to the appellants. After the trial court denied a motion to alter, amend, or vacate, this appeal was filed.

Appellants argue on appeal that the ordinances in question violate the constitutional provisions previously set forth herein. "The question thus presented is one of law" as a party moving for judgment on the pleadings "admits for the purposes of his motion not only the truth of all of his adversary's well-pleaded allegations and fair inferences therefrom, but also the untruth of all of his own allegations which have been denied by his adversary." *Archer v. Citizens Fidelity Bank & Trust Company*, Ky., 365 S.W.2d 727, 729 (1962). The trial court's decisions on questions of law are entitled to no deference. *See e.g., Scifres v. Kraft*, Ky. App., 916 S.W.2d 779, 781 (1996). An ordinance is presumed valid if "any proper reasonable basis" can be identified to support it. *City of Erlanger v. KSL Realty Corporation*, Ky., 704 S.W.2d 649, 650 (1986). However, "the established policy in the interpretation of taxing statutes (or ordinances] is to resolve doubts in favor of the taxpayer." *George Wiedemann Brewing Company v. City of Newport*, Ky., 321 S.W.2d 404, 407 (1959).

Among the appellants' arguments is that the license fee is an impermissible income tax, contrary to § 181 of the Kentucky Constitution. This argument is without merit as the appellate courts of this state have consistently viewed similar revenue producing measures to be permissible occupational taxes, not impermissible income taxes. *See e.g., City of Louisville v. Sebree*, 308 Ky. 420, 214 S.W.2d 248 (1948); *Commissioners of the Sinking Fund of the City of Louisville*

v. Hopson, Ky. App., 613 S.W.2d 621 (1980); *Patrick v. City of Frankfort*, Ky., 539 S.W.2d 275 (1976).[3]

This appeal turns on whether Pulaski County's occupational tax may be levied upon the appellants. Relying primarily upon *Murdock v. Pennsylvania*, 319 U.S. 105, 63 S. Ct. 870, 87 L. Ed. 1292 (1943) and *Follett v. Town of McCormick*, 321 U.S. 573, 64 S. Ct. 717, 88 L.Ed.2d 938 (1944), appellants argue that Pulaski County's occupational tax improperly violates their constitutional right to freely exercise their religion. Those cases are distinguishable, however, because they did not involve an occupational tax levied as a percentage of a person's income. Rather, those cases involved a flat fee to be paid before someone could engage in their religious activities. This distinction was made evident in *Jimmy Swaggart Ministries v. Board of Equalization of California*, 493 U.S. 378, 389, 110 S. Ct. 688, 695, 107 L. Ed.2d 796 (1990), in which the Court limited "*Murdock* and *Follett* to apply only where a flat license tax operates as a prior restraint on the free exercise or religious beliefs".

---

[3] Although the courts of this state have steadfastly refused to change their ultimate opinion that these types of revenue producing measures are not income taxes, they have questioned the legal basis for that conclusion. *See e.g., Commissioners of the Sinking Fund of the City of Louisville v. South Central Bell Telephone Company*, Ky., 809 S.W.2d 380, 381-82 (1991) ("We in Kentucky have deluded ourselves into believing that an occupational tax is not an income tax through the medium of *City of Louisville v. Sebree* . . ."); *Hopson, supra* at 621 ("the occupational tax is a tax on income, and probably would be illegal except for the fact that this court in *City of Louisville v. Sebree* . . . saw fit to legalize it by the stratagem of calling it something else"). Even if we were inclined to overrule *Sebree, arguendo*, we could not do so under Supreme Court Rule (SCR) 1.030 (8) (a), which states that "[t] he Court of Appeals is bound by and shall follow applicable precedents established in the opinions of the Supreme Court and its predecessor court."

Pulaski County's occupational tax does not regulate *per se* any religious activity. As noted by the trial court, "the Pulaski County license fee in no way . . . impedes, interferes with, dictates, or infringes upon how they [appellants] exercise any aspect of their religion. They are free to practice their religion totally unencumbered by any regulation by Pulaski County." To put it plainly, Pulaski county's occupational tax is a straight forward, neutral revenue-producing measure intended to help pay for the services offered to the general public by that county.

We do not doubt in any way the sincerity of appellants' religious beliefs. However, it is undisputed that appellants derive income from their employment in Pulaski County. Therefore, they stand in the same position as all others similarly situated who have raised similar claims[4] as freedom of religion does not mean that one is free "from all financial burdens of government, including taxes on income or property." *Follett, supra* at 321 U.S. 578, 64 S. Ct. 719. *Accord Murdock, supra* at 319 U.S. 112, 63 S. Ct. 874.

The judgment of the Pulaski Circuit Court is affirmed.

ALL CONCUR.

Brief For Appellants:

A.C. Donahue
Somerset, Kentucky

David C. Gibbs, III
Seminole, Florida

Brief For Appellee:

Michael Louis Duncan
Somerset, Kentucky

---

[4] Judicial officers are not exempt from similar taxes, *Hopson, supra* at 624, nor are federal employees, *Patrick, supra.*

APPENDIX C

COMMONWEALTH OF KENTUCKY
28TH JUDICIAL CIRCUIT
PULASKI CIRCUIT COURT
DIVISION II

[Entered Jul. 6, 1999]

Civil Action No. 99-CI-00345

NOAH BROUGHTON, *et al.*,
Plaintiff,

vs:

PULASKI FISCAL COURT,
Defendant.

DECLATORY JUDGMENT

The Defendant, Pulaski Fiscal Court, having moved the Court for a Judgment on the pleadings, and after hearing said Motion, and arguments of counsel, and review of submitted Briefs, and being otherwise sufficiently advised, the Court finds that this matter is appropriate for a Judgment on the pleadings and hereby enters the following Findings of Fact. Conclusions of Law, and Declaration of Judgment:

FINDINGS OF FACT

1. The Plaintiffs are persons who receive net profits, salaries, wages, commissions, or fees, as a result of the practice of their religious activities in Pulaski County, Kentucky.

2. Pulaski County Fiscal Court assesses through its Department of License Fee Collections pursuant to County Ordinance 220.9, enacted in 1988, and amended thereafter, a

license fee on businesses, trades, occupations, and professions, transacting within its county limits. This tax is commonly referred to as an occupational tax as it is assessed in the form of a percentage of wages or net profits earned by persons with businesses, trades, occupations, and professions. The purpose of this tax is to raise revenue. The state statute which permits this county ordinance is KRS 68.197.

3. Neither the Pulaski County Ordinance or KRS 68.197 allows an exemption from the license fee tax for persons who receive net profits, salaries, wages, commissions, or fees as a result of the practice of their religious activities.

CONCLUSIONS OF LAW

This Court has both subject matter jurisdiction and jurisdiction over the parties in this action, Pulaski County is the appropriate venue for this action.

JUDGMENT

This Court has previously examined Pulaski County's occupational tax ordinance in *Duncan v. Pulaski Fiscal Court*, 94-CI-00681. Therein, we declared, based on *City of Louisville, et al, v. Sebree*, 214 S.W.2d 248 (Ky. 1948) and the line of cases thereafter, that the enactment and revenue raising purpose of Pulaski County Ordinance 220.9 was constitutional.

The issue now before the Court is a matter of application of said Ordinance. The Plaintiffs argue that to impose this tax on persons who receive net profits, salaries, wages, commissions, or fees as a result of the practice of their religious activities is an unreasonable impediment to their constitutional right to the free exercise and expression of religion.

They argue that being a minister is not a "privilege" which would be subject to license fee taxation, but is instead a "right" which is not subject to license fee taxation. They acknowledge that income of ministers is subject to income

taxation but they also correctly point out that under Kentucky's constitution, Counties do not have the power to tax income. The Plaintiffs thus present a classic "catch 22" situation.

While the argument of the Plaintiffs is understood and appreciated, this Court fashions here a ruling in the spirit of and consistent with Chief Justice Palmore's concurring opinion in *Hopson v. Commissioners of the Sinking Fund of the City of Louisville*, 614 S.W.2d 620, (Ky. 1981). That case involved essentially the same issue before this Court, only it involved whether or not Constitutional Officers could be made subject to license fee taxation. The argument presented on behalf of the Constitutional Officers was identical to the argument presented here by the Plaintiffs.

In the *Hopson* case at Page 621, Chief Justice Palmore wrote:

> About as close as we can come to the truth of the matter is that the occupational tax is a tax on income, and probably would be illegal except, for the fact that this Court in *Sebree* saw fit to legalize it by the stratagem of calling it something else. . .
>
> It is enough that whatever it may be called, it was declared valid in 1948, and as the opinion of the Court Appeals observed, it does not any more impinge upon the right or privilege of constitutional officers to carry out their functions than it does upon the privilege of anyone else to earn a living. We think it would be grossly unfair to the public in general for us to seize upon technical grounds and declare that we or any other public officers are exempt from it.

The imposition of the Pulaski license fee tax is no more than one of the methods which Pulaski County uses to raise revenue. In no manner, is any activity of any of the "persons" which are subject to this tax regulated by Pulaski County.

Specifically as to these Plaintiffs, the Pulaski County license fee tax in no way, impedes, interferes with, dictates, or infringes upon how they exercise any aspect of their religion. They are free to practice their religion totally unencumbered from any regulation by Pulaski County.

The Pulaski County ordinance merely imposes a license fee tax calculated on net profits, salaries, wages, commissions, or fees, earned by persons with businesses, trades, occupations, and professions. By definition and as pled herein, the Plaintiffs fall therein. They derive taxable income from their profession within Pulaski County. It is because of and upon that taxable income that the Pulaski County license fee tax is applied and calculated.

The Constitution guarantees only free expression of the rights raised by the Plaintiffs and even that is, without question, subject to reasonable restriction by the state. Here, there is no impediment whatsoever to the free expression of religion. This license fee tax applies only when "compensation" is earned as a result of a "profession". It is certainly reasonable that the Plaintiffs contribute, just as does every other person with a business, trade, occupation, or profession with subject income, to help pay for the services and protections afforded by Pulaski County.

Again quoting from Chief Justice Palmore in *Hopson* at Page 620:

> From the beginning to end this controversy has been a battle of labels. What is the occupational tax? Is it an income tax or a license tax? If it is a local income tax, orthodoxy suggests that it is not permitted by Sec. 181 of the Constitution. If it is truly a license tax, in the classical sense, it cannot be applied to constitutional officers. If the tax is on the money it is really an income tax. If it is on the privilege of engaging in an occupation it is really a license tax. And so on. This type of

reasoning can be carried on to the point of absurdity in just about any direction.

Our goal here is to advance the law's true purpose within the bounds of precedent and reason. The purpose of Pulaski County's occupational tax is to raise revenue to pay for, necessary services which benefit a citizenry inclusive of the Plaintiffs. The function of the occupational tax is totally non-regulatory. The effect of the occupational tax is no more "chilling" upon the Plaintiffs than is a permissible state income tax.

It is this Court's opinion that the Plaintiffs are in the same position as the Constitutional officers were in the *Hopson* case. Therefore, it is this Court's duty to rule in a manner consistent therewith.

THEREFORE, IT IS HEREBY DECLARED;

1. That Pulaski County Order 220.9 is constitutional in application to the Plaintiffs, and they are otherwise subject the taxation imposed by same.

2. That this Judgment is final and appealable and this matter is hereby stricken from the docket of this Court.

Given under my hand as Judge of the Pulaski Circuit Court, Division II, this 6th day of July, 1999.

/s/ William T. Cain
WILLIAM T. CAIN, Judge
PULASKI CIRCIUT COURT

DISTRIBUTION:

HON. FRED G. NEIKIRK
P. 0. Box 5
Somerset, KY 42502

HON. A. C. DONAHUE
P. 0. Box 659
Somerset, KY 42502

HON. DAVID C. GIBBS, III
HON. CHARLOTTE A. COVER
GIBBS & CRAZE, P.A.
5666 Seminole Blvd. Suite 2
Seminole, Florida 33772

This 7th day of July, 1999.

/s/ GEORGE FLYNN
CLERK, PULASKI CIRCUIT COURT

APPENDIX D

[Filed Apr 28, 1998]

COMMONWEALTH OF KENTUCKY
28TH JUDICIAL CIRCUIT
PULASKI DISTRICT COURT

CASE NO. 96-M-01442
CASE NO. 97-M-00128

COMMONWEALTH OF KENTUCKY,
Plaintiff,

VS.

NOAH C. BROUGHTON,
Defendant.

AGREED ORDER

Joint motion having been made and and the parties being in agreement,

IT IS HEREBY ORDERED that Case No. 96-M-01442 and Case No. 97-M-00128 be dismissed subject to the following terms and agreements:

(1) Within sixty (60) days of entry of this Order, Defendant will file returns pursuant to Pulaski County Ordinance 220.22, § 1.03, with the Occupational Tax Administrator, and pay any occupational license taxes due on any income derived from sources other than income received for the performance of his duties as Pastor of Saline Baptist Church. These returns shall be filed and taxes paid for the 1991 through 1997 tax years.

(2) Defendant will pay the occupational license taxes due on income received for the performance of his duties as Pastor of Saline Baptist Church during tax years 1991 through 1997 upon the condition that the Commonwealth will deposit said occupational license taxes into an escrow account with the proceeds of said account to be distributed as follows:

(a) should Defendant prevail in a claim against the Commonwealth as more fully described in paragraph (3) below, the Defendant shall be entitled to a full refund.

(b) should the Commonwealth prevail in the claim brought against it as more fully described in paragraph (3) below, the moneys in escrow shall be immediately paid to the Occupational Tax Administrator in full satisfaction of the occupational license taxes due on income received by Defendant for the performance of his duties as Pastor of Saline Baptist Church during tax years 1991 through 1997.

(c) if at any time before a final, nonappealable judgment of the claim described in paragraph (3) below the Kentucky Legislature should enact legislation both excluding ministers from the payment of occupational license taxes and making such legislation applicable to pending litigation, the taxes held in escrow will be refunded to Defendant.

(d) should the Defendant fail to file his claim as described in paragraph (3) below within twelve (12) months from the date of entry of this order, the taxes held in escrow shall be dispersed to the Occupational Tax Administrator.

(3) Defendant will file a declaratory judgment action in Circuit Court to seek a declaration of his rights as a minister with regard to the imposition of Pulaski County Ordinance 220.22 occupational license fee on his constitutional privilege to carry out his calling as a minister.

(4) The Commonwealth agrees that the Defendant shall be assessed no interest or penalties for the tax years 1991 through 1997 for the period during which these District Court and the proposed Circuit Court actions were and will be pending.

(5) The parties agree that the basis for this suit is to give the Defendant an opportunity to file a Declaratory Judgment action in Circuit Court to seek a declaration of his rights as a minister with regard to the imposition of Pulaski County Ordinance 220.22 occupational license fee on his constitutional privilege to carry out his calling as a minister. Defendant, however, shall not be compelled to file such action.

Signed this 28th day of April, 1998

/s/ Illegible
PULASKI DISTRICT JUDGE

/s/ Illegible
PULASKI COUNTY ATTORNEY
/s/ CHARLOTTE COVER
ATTORNEY FOR DEFENDANT
/s/ Noah Broughton
NOAH BROUGHTON

DISTRIBUTION:

Hon. Fred G. Neikirk
Pulaski County Attorney
P.O. Box 5
Somerset, KY 42502

Hon. Charlotte Cover
Gibbs & Craze
5666 Seminole Blvd. Suite 2
Seminole, FL 33772

Hon. A. C. Donahue
P. O. Box 659
Somerset, KY 42502

APPENDIX E

D. PULASKI COUNTY FISCAL COURT

ORDINANCE #220.9

AN ORDINANCE RELATING TO LICENSE FEES UPON ALL PERSONS WHO ARE ENGAGED OR EMPLOYED IN ANY TRADE, OCCUPATION OR PROFESSION IN THE COUNTY OF PULASKI, FOR THE HEALTH, EDUCATION, SAFETY, WELFARE, AND CONVENIENCE OF THE INHABITANTS OF PULASKI COUNTY, KENTUCKY

BE IT ORDAINED BY THE FISCAL COURT OF THE COUNTY OF PULASKI, COMMONWEALTH OF KENTUCKY, AS FOLLOWS:

SECTION I.

DEFINITIONS: WORDS AND PHRASES USED IN THIS ORDINANCE SHALL HAVE THE ORDINARY AND ACCEPTED MEANING ASCRIBED TO THEM IN THIS SECTION, EXCEPT WHERE THE CONTEXT CLEARLY INDICATES OR REQUIRES A DIFFERENT MEANING:

(a) The phrase "license fee" shall mean a tax imposed for the privilege of exercising the right to engage in trade, occupation or profession for compensation paid by others or the right to engage in trade, occupation, or profession for oneself, for profit or gain, within Pulaski County, Kentucky.

(b) The word "person" shall mean and include all natural persons, partnerships, firms, associations, governmental bodies and agencies, and corporations, and whenever used in any interpretation.

(c) "Administrator" means an official administrator of the occupational tax, to be appointed by the Pulaski County Fiscal Court.

(d) The word "County" means Pulaski County, Kentucky, including the cities of Somerset, Burnside, Ferguson, Eubank and Science Hill, and any other community whether incorporated or not.

SECTION II.

EFFECTIVE DATES AND DURATION:

This Ordinance shall apply and be effective from and after January 1, 1987, and shall remain in full force and effect until repealed or modified in a lawful manner.

SECTION III.

LICENSE FEES REQUIRED:

(a) All persons: engaged in any trade, occupation or profession within Pulaski County, when employed by another, shall pay a license fee measured by and equal to one percent (1%) of gross receipts paid for such service, except those exempted under KRS 68.197.

(b) All persons engaged in any trade, occupation, or profession, within Pulaski County, for themselves, for profit or gain, shall pay a license fee measured by and equal to one percent (1%) of the net profit realized from such activity, except those exempted under KRS 68.197.

(c) "Net Profit" as used herein shall mean gross receipts less ordinary business deductions, recognized, as such, and allowed by the laws of the Commonwealth of Kentucky applicable on January 1, 1987, in computing income tax liability, but without deductions for taxes based on income.

(d) It shall be unlawful for any person to engage in any trade, occupation or profession within Pulaski County without withholding, reporting and paying

the license fees herein provided and required. Portions of this Ordinance prescribing a penalty in the form of a fine or imprisionment, shall mean and include the individual members of a firm, partnership or association and the officers of any governmental body or agency, or any corporation.

(e) The words and phrases "trade, occupation, or profession" shall include any and all activities and the rendering of any and all services of all kinds of other remuneration, or net profit or gain of any kind when applied to persons so engaged for themselves whether the person be a resident of Pulaski County or not.

(f) The phrase "gross receipts" and the word "compensation" when applied to a person employed by others shall have the same meaning and shall include the gross amount of all salaries, wages, commission, bonuses or any other money payments of any kind, or other considerations having a monetary value, which a person receives or becomes entitled to, or is given credit for by an employer, without deduction for withholding taxes, social security benefits, any form of insurance or retirement benefits, or other deductions made by an employer in calculating "take home-pay" provided, however, that any travel expenses actually incurred and paid by the employer, gratuities such as "tips" paid by someone other than the employer, and wages, salaries or other compensation received by domestic servants employed in a private home, shall be exempt from the operation of this order.

(g) The singular shall include the plural, the plural shall include the singular, the masculine or feminine shall include both and the neuter genders whenever susceptible to such.

SECTION IV.

REGULATION, ADMINISTRATION, ENFORCEMENT AND COLLECTION OF LICENSE FEES AND THE PURPOSE THEREOF:

(a) It shall be the duty of the Administrator to collect all license fees and deposit the same in the General Fund of Pulaski County, to be disbursed as follows:

30% Industrial Development
24% Road Development
26% To The Five Incorporated Cities
20% Revenue Sharing, Not To Exceed $500,000.00

(b) The Administrator shall have the power and it shall be his duty to make and publish such rules and regulations as may be necessary to administer this Ordinance and to provide such printed forms as may be required for reporting, paying and receipting for all such license fees and for all other requirements in the proper and efficient administration of this order.

SECTION V.

DUTY OF EMPLOYER TO WITHHOLD, REPORT AND PAY LICENSE FEES OF EMPLOYEES:

(a) It shall be the duty of every person engaged in any trade, occupation or profession, within Pulaski County who employs or engages the services of others in connection therewith, to withhold from the compensation of such employee, the license fees herein provided, at the time such compensation is paid or credited; said person shall report and pay the same to the Administrator on or before April 30, July 31, October 31, and January 31 of each year, for the license fees accrued during the preceding three months beginning January 1, 1987, except as

provided in (b) and (c). Failure on the part of the employer to withhold, report and pay the license fees shall not relieve the employees from liability therefor.

(b) A person engaged in agriculture business (raising crops and livestock) who employs less than five (5) employees on a regular time basis, (four-hundred-fifty (450) hours during a quarter), may file a return and pay the withholding tax at the end of the taxable year.

(c) Any person may elect to estimate and pay in advance, the withholding tax that may become due from compensation to be paid employees for a taxable year. This procedure will exempt the person from filing quarterly returns. The penalty for underpayment will be as provided in subsection (d) below.

(d) All license fees not paid when due shall draw interest at the rate of eight per cent (8%) per annum from due date until paid, and upon failure to pay any license fee when due, a penalty of ten per cent (10%) is hereby imposed which penalty shall draw interest from due date.

SECTION VI.

DUTY OF PERSON ENGAGED IN TRADE, OCCUPATION OR PROFESSION FOR ONESELF TO REPORT AND PAY LICENSE FEES:

(a) It shall be the duty of every person engaged in any trade, occupation or profession for themselves, for gain or profit, within the County, to file with the Administrator a return showing the net profit or gain from such activity realized during the preceding year as determined by the Licensee's method of

accounting or keeping books, and shall pay the license herein provided, calculated on the net profit for such preceding fiscal year. Within 105 days after the end of the Licensee's fiscal year following January 1, 1987, such persons shall file a report with the Administrator showing the net profits or gain for the preceding license period.

(b) The first license period shall extend from January 1, 1987, until the end of the Licensee's fiscal year and the license fee for the period shall be calculated on a pro-rated basis as of the end of the Licensee's fiscal year. The Licensee shall be permitted to adopt any fiscal period which corresponds with his system of accounting or bookkeeping, or the period adopted for income tax purposes.

SECTION VII.

DUTY OF EMPLOYEE WHEN EMPLOYER FAILS TO WITHHOLD, REPORT OR PAY:

In the event an employer fails to withhold, report or pay license fees for which any employee is liable, then it shall be the duty of the employee to report and pay the same when due and to file reports showing total gross receipts for the period from January 1, 1987, to December 31, 1987, and thereafter annually. Said reports shall be made upon forms furnished by the Administrator and shall be filed not later than April 15th of each year. In the event the Licensee has not paid the full amount of license fees due for any period, the deficit, together with interest and penalties, must be paid when the reports above provided for are filed or the amount legally determined by the Administrator. In the event of over-payment, Pulaski County shall make prompt refund.

SECTION VIII.

APPORTIONMENT OF LICENSE FEES WHERE COMPENSATION OR NET PROFIT IS DERIVED FROM ACTIVITY BOTH WITHIN AND WITHOUT THE COUNTY:

(a) Whenever an employee receives compensation for services or activity performed both within and without the County, the license fee required under this Ordinance shall be computed and paid upon the basis of the proportion of compensation earned for services performed within the County.

(b) Whenever the net profit or gain from any trade, occupation or profession is derived from activity or business done both within and without the County, the license fee required under this Ordinance shall be computed and paid upon the proportion of net profit or gain derived from activity within the County.

(c) In all cases of license fees computed upon the basis of apportionment of compensation or net profit or gain, as herein provided, the apportionment may be shown by the sworn statements of the licensee or employer, but shall not be binding upon the County. Said apportionment shall be subject to verification and determination by the Administrator or his agents or employees through examination and audit of the books and records of the licensee or employer, or both, as required by the Administrator.

SECTION IX.

RECORDS REQUIRED:

(a) The reports required by this ordinance shall be in form prescribed by the Administrator and shall contain all essential. information, date and figures, upon which the license fees required by this

Ordinance are computed. Every person required to pay any license fee provided by this ordinance shall be required to make all books, records and accounts upon which information required by this Ordinance is based, available to the Administrator, his agents or employees, for the purpose of examination, audit or verification; provided, however, that if any licensee or employer subject to the provisions of this Ordinance shall voluntarily submit copies of income tax returns for examination, then in such case no further examination or audit will be required until and unless there is re-examination or audit made by the taxing authority to whom the return was made; and provided further, the Administrator may dispense with examination of the books, records, accounts, or tax returns of the licensee in any case where the Administrator is furnished with a certificate of any attorney at law, a licensed public accountant, or the sworn statement of any other accountant or bookkeeper of the licensee stating that the amount of tax reported conforms to the income tax return filed by the licensee for the applicable period:

(b) Nothing herein shall prevent or preclude the Administrator from conducting an examination and audit of the books, records, and accounts, as herein provided at any time he may have reasonable grounds to believe that the Licensee has not correctly reported and paid the license fees due under the provisions of this Ordinance.

(c) All information obtained by the Administrator or any of his agents or employees, or any other official or employee of Pulaski County, from any reports, examination or audit of books, records, account, income tax returns, or any other source, in the

administration of this Ordinance, shall be treated and considered as confidential and privileged except for official purposes, unless otherwise treated by judicial decree or specific provision of law, and shall not be open to inspection by the public.

(d) Any official, agent or employee of Pulaski County who divulges any information obtained under the provision of this Ordinance, except for the purposes of administering this Ordinance as herein provided, shall be guilty of a misdemeanor, and upon conviction, shall be fined not less than fifty dollars ($50.00) nor more than five hundred ($500.00) or imprisionment for a period not to exceed twelve (12) months, or both.

(e) It is further provided that the Administrator or any County Official or employee shall have the right to disclose to the Commissioner of Revenue of the State of Kentucky, or his duly authorized agent or employee, any of the information protected by Section VIII of this Ordinance, provided reciprocal right to information concerning any persons liable for license fees under the provisions of this ordinance is made available to the County by such State Authorities; and provided further, that the County may publish statistics based upon information obtained in the administration of this Ordinance so long as such published statistics do not reveal the identity of any Licensee.

SECTION X.

PENALTIES FOR VIOLATIONS:

Any person who violates any of the provisions of this Ordinance, by failing to pay any license fee when due, or failing to withhold and pay any license fee when due, or

failing to file any report or submit, to any examination required by this Ordinance, or in any other manner fails or refuses to comply with any of the terms or provisions of this ordinance, shall be guilty of a misdemeanor and upon conviction shall be fined for not less than fifty dollars ($50.00) nor more than five hundred dollars ($500.00), or imprisionment for a period not to exceed twelve (12) months, or both. Such penalties shall be in addition to other penalties imposed by the Ordinance. Each failure or refusal to comply with any of the provisions of this Ordinance shall constitute a separate offense, and each day that such failure or refusal continues without compliance shall constitute a separate offense.

SECTION XI.

SEVERABILITY:

Each section and each provision of each section of this Ordinance are severable, and if any provision, section, paragraph, sentence or part thereof, or the application thereof to any person licensee, class or group, be held unconstitutional, or invalid for any reason, such holding shall not affect or impair the remainder of this Ordinance, it being the legislative intent to ordain and enact each provision, section, paragraph, sentence and part thereof, separately and independently of every other.

APPENDIX F

Ordinance No. 220.22

AN ORDINANCE AMENDING ORDINANCE NO. 220.9, 220.13, & 220.14, RELATING TO THE IMPOSITION AND PAYMENT OF LICENSE FEES ON BUSINESSES, OCCUPATIONS AND PROFESSIONS WITHIN PULASKI COUNTY, KENTUCKY FOR THE HEALTH, EDUCATION, SAFETY, WELFARE AND CONVENIENCE OF THE INHABITANTS OF PULASKI COUNTY, KENTUCKY, PURSUANT TO KRS 68.197.

WHEREAS, THE PULASKI COUNTY FISCAL COURT DESIRES CERTAIN CHANGES TO BE MADE TO THE ORDINANCE IMPOSING LICENSE FEES ON BUSINESSES, OCCUPATIONS AND PROFESSIONS WITHIN PULASKI COUNTY, KENTUCKY SO THAT SAID FEE AND PAYMENT CAN BE ADMINISTERED MORE EFFICIENTLY;

NOW, THEREFORE, BE IT ORDAINED BY THE FISCAL COURT OF PULASKI COUNTY, KENTUCKY AS FOLLOWS:

THAT ORDINANCE NO. 220.9, 220.13, & 220.14 IS HEREBY REPEALED, AMENDED AND RE-ADOPTED IN FULL TO READ AS FOLLOWS:

SECTIONS:

1.01 DEFINITIONS
1.02 OCCUPATIONAL LICENSE FEE GENERALLY
1.03 RETURNS REQUIRED
1.04 EXTENSION OF DATE FOR RETURNS-INTEREST
1.05 PENALTIES-INTEREST
1.06 EXEMPTIONS
1.07 ADMINISTRATIVE PROVISIONS

1.08 COLLECTION OF TAX-RECORDS
1.09 RULES AND REGULATIONS
1.10 EXAMINATION OF RECORDS
1.11 ONLY LAWFUL TAX IMPOSED
1.12 INFORMATION CONFIDENTIAL
1.13 CRIMINAL PENALTIES
1.14 SEVERABILITY

SECTION 1.01 DEFINITIONS

The following expressions when used in this chapter shall have the ordinary and accepted meaning ascribed to them in this section, except where the context clearly indicates or requires a different meaning:

1) "ASSOCIATION" means a partnership or any other form of unincorporated enterprise owned or operated by two or more persons.

(2) "BUSINESS, PROFESSION OR OCCUPATION" means an enterprise, activity, profession or under-taking of any nature conducted for gain or profit within the county, whether conducted by a self-employed person, natural person, a corporation, an corporation, an association, a partnership, a joint venture, a fiduciary, an itinerant merchant, or any other entity; it shall include specifically but not exclusively the rental of any property, real or personal, but shall not include the usual activities of a board of trade; chamber of commerce, trade association, or union; community chest fund or foundation; a corporation or association organized and operated exclusively for religious, charitable, scientific, literary, educational, or fraternal purposes (IRC Section 501 (c) (3)) where no part of the earnings, income or receipts of such unit, group, or association inures to the benefit of any private shareholder or other person.

(3) "CORPORATION" means a corporation or joint stock company including S corporations organized under the laws of the United States, Kentucky, another state, territory or foreign country or a dependency thereof, or otherwise existing under color of law as a corporation including a non profit corporation and a joint stock company and recognized as such for federal income tax purposes.

(4) "COUNTY" means Pulaski County, Kentucky, including the cities of Somerset, Burnside, Ferguson, Eubank and Science Hill, and any other community whether incorporated or not.

(5) "DOMESTIC SERVANT" means an individual employed to drive his employer as a chauffeur or employed on the grounds or in the home of his employer, to cook, clean, wash, garden, transport, or otherwise care for or wait upon the employer, the employer's family and guests or to care for the person, home, grounds, and/or vehicles of the employer, the employer's family and guests, including but not limited to maids, butlers, nurses, nursemaids, gardeners, cooks, launderers and chauffeurs engaged to service the employer, the employer's family and guests, but not including such individuals who are employed by a cleaning service, personal nursing service, chauffeuring service or other entity which offers the services of its employees to the public.

(6) "EMPLOYER" means an individual, partnership, association, corporation, S corporation, joint venture, governmental body or unit of administration or any other entity who (or that) employs one or more persons on the basis of a salary, wage, commission, or other compensation, regardless of whether such employer is engaged in business.

(7) The term "FEDERAL INCOME TAX RETURN" means all forms filed for Federal Income Tax purposes including all schedules.

(8) "FIDUCIARY" means a guardian, trustee, executor, administrator, receiver, conservator, or any individual or corporation acting in a fiduciary capacity for any other person. This includes all persons required to file under KRS 141.190.

(9) "ITINERANT MERCHANT" means an individual who does not have a permanent business location in the County and who sells items of merchandise.

(10) The term "KENTUCKY STATE INCOME TAX RETURN" means all forms filed for Kentucky State Income Tax purposes including all schedules.

(11) The phrase "LICENSE FEE" shall mean a tax imposed on (a) salaries, wages, commissions and other compensation earned by persons within the county for work done and services performed or rendered in the county; and (b) the net profits of self-employed persons, corporations, S corporations, associations, partnerships, joint ventures, fiduciaries, itinerant merchants, or any other entity resulting from businesses, trades, occupations, professions, or activities conducted in the county.

(12) "LICENSEE" means any person required to file a separate return or to pay a license fee thereon under this chapter.

(13) "NET PROFIT" as used herein shall mean gross receipts less ordinary business deductions, recognized as such, and allowed by the laws of the Commonwealth of Kentucky, in computing income tax liability, but without deductions for (1) taxes based on income and (2) Net Operating Losses.

(14) "NEXUS" shall mean a minimum connection between a person/business entity and the taxing jurisdiction brought about when the person/business entity purposefully avails itself of the privileges and protection of the jurisdiction while

engaging in business or practicing a trade, occupation, or profession, without excluding by implication other activities which may create a nexus.

(15) "OCCUPATIONAL TAX ADMINISTRATOR" means the official collector and administrator of the occupational tax, to be appointed by the Pulaski County Fiscal Court.

(16) "PARTNERSHIP" means the relationship between two or more who join together to carry on a trade or business. Each partner contributes money, property, labor, or skills, and each expects to share in the profits and losses. A partner can be an individual person, corporation, trust, estate, or another partnership.

(17) "PERSON" shall mean and include every natural person, partnership, fiduciary, association, or corporation. Whenever this term is used in any clause prescribing and imposing a penalty in the nature of a fine or imprisonment, it, as applied to partnerships and associations, shall mean the partners or members thereof and as applied to corporations, the officers.

(18) "QUESTIONNAIRE" means the registration form required by the Occupational Tax Office to be completed before the commencement of business within Pulaski County.

(19) "RENTAL UNIT" shall mean any room or rooms connected or other structure or portion thereof constituting a separate, independent establishment of premises for rent, lease, or sublease to the occupant thereof.

(20) "RETURN" or "REPORT" means any properly completed and, if required, signed form, statement, certification, declaration, or any other document permitted or required to be submitted or filed with the Occupational Tax Office.

(21) "SALARIES," "WAGES," "COMMISSIONS" and other "COMPENSATION" when applied to a person employed by others shall have the same meaning and shall include the gross amount of all salaries, wages, commissions, fees (including director fees), bonuses or any other money payments of any kind, or other considerations having a monetary value, which a person receives or becomes entitled to, or is given credit for by an employer, without deduction for withholding taxes, social security benefits, any form of insurance or retirement benefits, or other deductions made by an employer in calculating "take home-pay".

(22) "SOLE PROPRIETOR" means a natural person engaged in any business, profession or occupation, but not as an employee.

(23) "TAXPAYER" means any person or business made liable for taxation or for the payment of amounts withheld from employees under the terms of this chapter.

(24) The words and phrases "TRADE, OCCUPATION, or PROFESSION" shall include any and all activities and the rendering of any and all services of all kinds for net profit or gain of any kind when applied to persons so engaged for themselves whether the person be a resident of Pulaski County or not.

(25) "YEAR" means the calendar year or the fiscal year (employed by a business subject to the license fee imposed by this chapter) if the taxpayer reports for state income tax purposes on the basis of a period other than a calendar year.

(26) The singular shall include the plural, the plural shall include the singular, the masculine or feminine shall include both and the neuter genders whenever susceptible to such.

SECTION 1.02 OCCUPATIONAL LICENSE FEE GENERALLY

(A) Every person or business engaged in any trade, occupation, or profession, or other activity or anyone required to file a return under this ordinance in Pulaski County shall be required to complete and execute the questionnaire prescribed by the occupational Tax Office. Each person shall be required to complete a separate questionnaire for each separate business before "the commencement of business or in the event of a status change, other than change of address. Licensees are required to notify the Occupational Tax Office of changes of address, or the cessation of business activity, and of other changes which render inaccurate the information supplied in the completed questionnaire.

(B) Every natural person and every entity defined in Section 1.01 (2) and/or 1.01 (24), engaging in any activity for profit or filing Kentucky Income Tax forms 740, 741, 765, 720 or 720S, shall be required to file and pay to the Occupational Tax Administrator an annual Occupational License Fee resulting from engaging in each said activity. Said license fee shall be measured by one percent (1%) of compensation defined in Section 1.01 (21) and one percent (1%) of the net profits defined in Section 1.01 (13) for each separate business or entity, except those exempted under KRS 68.197.

(1) Each person, business, and entity above operating for profit entirely within Pulaski County shall attach a copy of their appropriate Kentucky Income Tax Return (form 720 or 720S along with 720L, 740, 741, or 765) and supporting schedules (*e.g.* Federal Schedule C, E, or F).

(2) Persons and entities above operating for profit both within and without Pulaski County shall determine income taxable to Pulaski County by an allocation

process similar to the one used by the Commonwealth of Kentucky in determining income taxable to it. Three factors, gross receipts, property, and payroll, are used in the calculation as follows:

GROSS RECEIPTS

The total of all monies received or due from sales or services within Pulaski County operations is to be divided by the total of all monies received or due from sales or services in all locations. This quotient is to be carried to four decimal places.

PROPERTY

The total original cost of all real and tangible personal property sited in Pulaski County is to be divided by the total original cost of all real and tangible personal property in all locations. Leased and rented property is valued at eight times the annual rental rate. This quotient is to be carried to four decimal places.

PAYROLL

The total amount of payroll as reported to the tax Administrator is to be divided by the total annual payroll in all locations. This quotient is to be carried four decimal places.

If any of the three factors equals zero, that factor is dropped from further calculations. The remaining factors are then averaged to obtain the weighted apportionment factor. The weighted apportionment factor is then multiplied by the net income shown on the entity's Kentucky Income Tax Return.

(3) Where Salaries, Wages, Commissions or other Compensation are earned for work done or services performed or rendered both within and without the county, said license fee shall be measured by such

part of the salaries, wages, commissions or other compensation as is earned as a result of work done or services performed or rendered in the county. Said license fee shall be computed by obtaining the percentage which the salaries, wages, commissions or other compensation within the county bears to the total salaries, wages, commissions or other compensation earned. Adequate records must be kept in order for the occupational Tax Administrator to ascertain the accuracy of percentages reported.

(4) All partnerships (not their partners) and S Corporations (not their shareholders) are subject to this ordinance, that is, the Occupational License Fee is not "passed through" these entities. Partners are subject to the Occupational License Fee on any such payments. The partnership will be subject to the Occupational License Fee on any income shown on Schedule K, page 3 of Kentucky Form 765, less said guaranteed payments.

(C) Subject to this ordinance is all income derived from the hire, rental or leasing of personal property, including those persons engaged in farm activity. All wages, salaries, commissions, or other income earned or received by persons, associations, partnerships, corporations, S corporations, joint ventures or any other entity shall be deemed to be engaged in the business of renting or leasing real estate if said person, association, partnership, corporation, S corporation, joint venture or other entity owns any interest in:

(1) real estate In Pulaski County used for commercial or industrial purposes, or

(2) more than two a residential rental or leasable units in Pulaski County. (see SECTION 1.06 (C))

Persons, associations, partnerships, corporations, joint ventures or any other entity will be subject to the occupational License Fee on any income shown on Federal Schedule E.

(E) Every person or business engaged in farm activity for profit will be subject to the Occupational License Fee on any income shown on Federal Schedule F.

(F) Sole proprietors engaged in any business activity for profit will be subject to the Occupational License Fee on any income shown on Federal Schedule C.

(G) Wages earned either within or outside Pulaski County may not be used as a credit against the Net Profits of a business.

(H) A person practicing a business, profession, trade or occupation shall be deemed to be subject to the net profits license fee if the person has a nexus with Pulaski County sufficient to justify the imposition of the license fee in a manner consistent with the commerce clause and the due process clause of the Fourteenth Amendment to the Constitution of the United States and other applicable federal law. If the person has a sufficient nexus with Pulaski County, but also has a sufficient nexus with other counties of Kentucky, other states of the United States, and/or other nations, then the net profits derived from activities conducted within Pulaski County shall be determined by the apportionment formula set out in Section 1.02 (B) (2). It shall not be necessary that there be an independently established nexus between Pulaski County and each activity from which the licensee has derived income subject to apportionment. Consequently, the "net profit" of the corporation, fiduciary, partnership or other association shall be subject to apportionment and taxation based on unitary business principles. To the extent that the licensee submits satisfactory proof that any income is not from a unitary source, such income may be excluded.

(I) Establishing "Nexus"

Without excluding by implication other activities which may create a nexus, one or more of the following connections between a person/business entity in Pulaski County shall normally establish a sufficient nexus:

(a) Location of a place of business in the County;

(b) Frequent and continuing entry into the County in the course of business by an officer or employee of a business;

(c) Delivery of goods to residents in the County other than through the mails or by common carrier;

(d) Contracting to sell goods in the County;

(e) Conducting substantial business activity in the County leading to a contract to buy or sell goods.

SECTION 1.03 RETURNS REQUIRED

(A) It shall be the duty of every person engaged in any trade, occupation, or profession (1.01 (24)) for themselves, or any business (1.01 (2)), for gain or profit, within the County, to file with the Administrator a return showing the net profit or net loss from such activity realized during the preceding year as determined by the Licensee's method of accounting or keeping books, along with copies of appropriate forms filed with Federal and Kentucky State Income tax returns, and shall pay the license herein provided, calculated on the net profit for such preceding fiscal year. Within one hundred-five (105) days after the end of each of the Licensee's fiscal year following January 1, 1987, such persons shall file a report with the Administrator showing the net profit/loss for the preceding license period. All returns not received within one hundred-five (105) days after the year end shall then be deemed delinquent, unless a federal or State Extension has been granted (*see* Section 1.04), and may be assessed a

penalty of one hundred ($100) dollars in addition to any license fee, penalty, and/or interest owed to the Occupational Tax Administrator even in the event that the licensee has incurred a net loss. A Net Profits License Fee Return must be filed on each individual business regardless of profit or loss status on a form furnished by or obtainable from the Tax Administrator.

(B) WITHHOLDING AND PAYMENT OF TAX BY EMPLOYERS

Each employer who employs one or more persons within the county shall deduct at the time of the payment thereto, the license-fee due from each employee measured by the amount of salaries, wages, commissions, or other compensation due by the employer to the employee and shall pay to the Occupational Tax Administrator the amount of the license fee so deducted. The payment required to be made on account of deductions by employers shall be made quarterly, for the periods ending March 31st, June 30th, September 30th, and December 31st of each year, on or before the last day of the month next following the quarter of the deduction to the Occupational Tax Administrator. Payment shall be remitted along with a form furnished or obtainable from the Administrator and shall contain all essential information, dates and figures, upon which the license fees required by this Ordinance are computed. The employer must, annually during the month of January of each year, make a return to the Occupational Tax Administrator, in which is set forth the name and social security number of each employee of the employer during the preceding calendar year, giving the amount of salaries, wages, commissions or other compensation earned during such preceding year by each such employee and the amount of Occupational License Fees withheld pursuant to this chapter, together with a copy of the W-2 form each employee for said preceding calendar year. In lieu of W-2 forms a detailed reconciliation statement with

name, social security number, amount of salaries, wages, commissions or other compensation for each employee of the employer may be remitted for said preceding calendar year. Each employer must reconcile the sum total of compensation paid and taxes withheld as disclosed by the information return with the aggregate amount previously reported on the quarterly returns and with aggregate remittances paid for the calendar year, and any other pertinent information as the Occupational Tax Administrator may require. Provided, however, that the failure or omission by any employer to deduct such license fee shall not relieve the employee from the payment of such license fee and compliance with such regulations with respect to making returns and payments thereof, as may be fixed in this chapter or established by the Occupational Tax Administrator.

(C) Each employer who employs one or more persons within the county shall furnish each employee a statement on or before January 31 of each year showing the amount of compensation earned and the license fee deducted and paid by the employer during the preceding calendar year.

(D) Each employer who employs one or more persons within the county, in the event of overpayment by the employer of the employee license fee, shall upon request of the employee and may on its own initiative apply to the Occupational Tax Administrator for a refund on behalf of the employee, correcting the previously submitted return which had shown the excess withholding, and submitting those records of the payments made and amounts withheld from the employee on whose behalf a refund is sought (including proof or certification of the employees time spent inside and outside the county) as the Occupational Tax Administrator or her designee may reasonably require. Any employee, on his own initiative who wishes to file for a refund for over-payment of license fees withheld and reported by employer may do so by contacting the Occupational Tax Administrator

and filing FORM-ERC % (including proof or certification of time spent inside and outside the county) and submitting any other pertinent information as the Tax Administrator may require.

(E) If an employer fails to or is not required to withhold, report, or pay the License Fee it shall become the duty of the employee to file with the Occupational Tax Administrator. The only employer that is not required to withhold, report, and pay the License Fee is the Federal Government including the United States Postal Service. The payment required to be made by an employee, can be made quarterly, for the periods ending March 31st, June 30th, September 30th, and December 31st of each year, or at any time the employee wishes to make an estimated payment for the year in which wages are earned. All license fees must be received by February 28th for the preceding calendar year, together with a copy of the employee's W-2 form. Employers not required to withhold, report, or pay the license fee *must* annually during the month of January of each year, make a return to the Occupational Tax Administrator, in which is set forth the name and social security number of each employee of the employer during the preceding calendar year, giving the amount of salaries, wages, commissions or other compensation earned during such preceding year by each such employee. This list shall include all current full time employees, part time employees, temporary employees, and terminated employees whether it be voluntary or involuntary.

(F) It shall be the responsibility of persons who make Federal 1099 "non employee compensation" payments to natural persons other than employees for services performed within Pulaski County Kentucky, to maintain records of such payments and to report such payments to the Occupational Tax Administrator. Said payments must be reported on Form 1099-OT or its equivalent by February 28 of the year following the close of the calendar year in which the non

employee compensation was paid. Form 1099-OT requires that non employee compensation payments of $600.00 or more be reported. The information required to be reported by said licensee shall include:

(1) Payer's name, address, social security and/or Federal identification number.

(2) Recipient's name and address.

(3) Recipient's social security and/or Federal identification number.

(4) Amount of non employee compensation paid in the calendar year.

(5) Amount of non employee compensation earned in Pulaski County for the calendar year.

All licensee's and all corporations, partnerships, and sole proprietors whether or not deemed licensee's hereunder who make payments of $600.00 or more to natural persons other than employees are required to file Form 1099-OT.

(G) For the preceding clauses (A), (B), (D), (E) and (F), the records required by this Ordinance shall be on a form furnished or obtainable from the Administrator and shall contain all essential information, dates and figures, upon which the license fees required by this Ordinance are computed.

SECTION 1.04 EXTENSION OF DATE FOR RETURNS-INTEREST

An extension beyond the date for filing of any return shall be granted if either the Federal or State Government grants such an extension and said copy of extension is received by the Occupational Tax Office by the original due date. Provided, however, that any balance unpaid when payment is due under the terms of this chapter shall bear interest at the rate of eight percent (8%) per annum until paid. No extension shall be granted for more than six (6) months, and in no case for more than one (1) year

SECTION 1.05 PENALTIES-INTEREST

(A) Any person who fails to file the annual Net Profits License Fee Return on or before the due date shall be deemed delinquent and shall have added thereto a penalty of ten percent, and shall thereafter bear interest at the rate of eight percent per annum on the amount of the unpaid license fee which the return, if properly completed and filed, would have shown to be due. However, the penalty provisions of Section 1.04 shall govern licensees who have received an extension of time for filing pursuant to Section. 1.04.

(B) Any person who fails to pay on or before the date due (including any extension under Section 1.04 hereof) the amount of the Occupational License Fee as shown on the prescribed return shall be assessed a penalty of ten (10%) percent of the unpaid amount of the license fee whether or not the return has been timely filed. Any person who pays the full amount shown on the return but who fails to pay the amount of any additional Occupational License Fee due as finally assessed by the Occupational Tax Administrator within fifteen (15) days after the assessment becomes final shall be assessed a penalty of ten (10%) percent of the unpaid amount of the license fee. However, the aforesaid ten (10%) percent penalty on the amount due may be assessed without notice of final assessment of additional license fee due if the amount shown on the return is based on fraud or gross negligence. In all events the unpaid amounts of any license fee shall bear interest at the rate of eight (8%) percent per annum from the date originally due until paid in full.

(C) Any employer who fails or refuses to withhold monthly the license fee measured by a percent of salaries, wages, etc. or who fails to pay said money, after withholding the same, to the Occupational Tax Administrator at the time it is due as provided under the terms of Section 1.03 (B) shall become liable for the amount due and the same shall have

added thereto a penalty of (10%) percent and shall thereafter bear interest at the rate of (8%) percent per annum until paid.

(D) For the preceding clauses (A), (B), and (C), the interest and penalty provisions shall be applied cumulatively and the imposition of these interest and administrative penalty provisions shall not prevent the assessment of any additional penalties under Section 1.13.

SECTION 1.06 EXEMPTIONS

Compensation for the following classes of persons shall be exempt to the extent herein set forth from the provisions of the Pulaski County Fiscal Court Occupational License Fee. Said exemptions do not alleviate a tax payor's responsibility to file a required return:

(A) All natural persons aged 65 and older shall be exempt from the provisions of the Occupational License Fee as to the first two thousand ($2,000) dollars of salaries, wages, commissions, or other compensation earned by such persons in Pulaski County for work done or services performed or rendered in Pulaski County, or exempt as to the first two thousand ($2,000) dollars of net profits of any business, trade, occupation or profession conducted in Pulaski County. It shall be the duty of all employers to withhold on all wages. Each individual person entitled to this refund must file FORM-ERC65 provided by or obtainable from the Occupational Tax Office. A W-2 and proof of age must be provided to receive said refund. No more than one exemption will be allowed per person or business. This said exemption may be used on either personal wages or net profits.

(B) Compensation received for the raising or leasing of tobacco of less than one thousand (1,000) pounds shall be exempt from the Occupational License Fee.

(C) Compensation received for the renting or leasing of two or less residential rental units shall be exempt from the Occupational License Fee.

(D) A person engaged in agriculture business (raising crops and livestock) who employs less than five (5) employees on a regular time basis, (four hundred fifty [450] hours during a quarter), may file a return and pay the withholding tax at the end of the taxable year.

(E) Compensation received for domestic services rendered by those persons classified as domestic servants by Section 1.01(5).

(F) Those persons qualifying under KRS 68.197.

(G) No public service company that pays an ad valorem tax is required to pay a license tax, and no license tax shall be imposed upon or collected from any insurance company except as provided in KRS 91A.080, bank, trust company, combined bank and trust company, combined trust, banking and title business in this state, or any savings and loan association whether state or federally chartered, or in other cases where the county is prohibited by law from imposing a license tax because this is forbidden by KRS 68.197. As of January 1, 1984 bus line companies, regular and irregular route common carrier trucking companies and taxicab companies are expressly excluded from the definition of "public service corporation" at KRS 136.120 (1). Such companies therefore are now and since January 1, 1984 have been subject to the net profit license fee. To be entitled to this exemption, companies are required to show that they are actually assessed as public service companies by the Kentucky Revenue Cabinet and that they in fact pay an ad valorem tax based on this assessment. Licensees whose business is predominantly non-public service who are also engaged in public service activity are required to pay a

license fee on their net profit derived from the non-public service activities apportioned to the County.

SECTION 1.07 ADMINISTRATIVE PROVISIONS

(A) Fractional parts of a dollar—Licensees are permited to report items on all returns and accompanying schedules in whole dollar amounts. To do so, licensees should drop any amount less than fifty (50) cents and increase any amount from fifty (50) cents to ninety-nine (99) cents to the next highest dollar.

(B) Automatic Extension if due date falls on Saturday, Sunday or County of Pulaski Holiday—Any return required to be filed hereunder shall be considered to have been timely filed if it is postmarked or hand-delivered to the Occupational Tax Office on or before the due date or, in the event the due date is a Saturday, Sunday or County of Pulaski legal Holiday, if it is postmarked or hand-delivered to the Occupational Tax Office on the next day which is not a Saturday, Sunday or a County of Pulaski legal holiday.

(C) Limitations on credit, refund—Any request for a refund, or for credit for an overpayment of any occupational license fee paid to the Tax Administrator, unless paid under protest, must be filed within one year from the date of the filing of the completed return, if timely filed. In a case where the return involved was not timely filed, the request for refund must be made within one year from the original due date of the return. For the purpose of this regulation, a return shall be considered as timely filed if it is received at the Occupational Tax Office, or postmarked, by the due date specified in any duly approved extension of time for filing granted upon the request of the licensee.

SECTION 1.08 COLLECTION OF TAX—RECORDS

It shall be the duty of the Occupational Tax Administrator to collect and account for all license fees imposed by this

chapter and deposit the same in the Occupational Tax Fund of Pulaski County. These monies and all interest earned on these monies being held on deposit by the County are to be disbursed as follows:

(1) All expenses, including salaries, incurred in the operation of the Occupational Tax Administrator's Office;

(2) All budgeted expenses incurred in the operation of the 911 Emergency Program; and the Somerset/Pulaski County Ambulance Service in excess of revenues generated by said service;

(3) After the aforementioned disbursements have been made, the remaining funds shall be disbursed as follows;

20% General Fund, to replace funds lost from Revenue Sharing, not to exceed $500,000 each fiscal year. Any excess monies over $500,000 (dollars) beginning May 16, 1996 and ending May 16, 1999 shall be disbursed in the following manner. Excess monies not to exceed $128,000 (dollars) shall be divided on a per capita ratio to the five (5) incorporated cities with any remaining excess monies to be applied to the County Road Fund (Road Development).

30% Industrial Fund

24% Road Development

26% City Development, to be disbursed to the five incorporated cities based on population.

(4) The administration of the Occupational Tax Administrators office shall be based upon a calendar year.

SECTION 1.09 RULES AND REGULATIONS

The Occupational Tax Administrator is hereby charged with the enforcement of the provisions of this chapter, and is hereby empowered to prescribe, adopt, promulgate and enforce rules and regulations, relating to any matter or thing pertaining to the administration and enforcement of the provisions of this chapter, including but not limited to provisions for the re-examination and correction of returns as to which an overpayment or underpayment is claimed or found to have been made, and the rules and regulations promulgated by her shall be binding upon the licensee and the employers.

SECTION 1.10 EXAMINATION OF RECORDS

The Occupational Tax Administrator or any agent or employee designated in writing by her is hereby authorized to examine the books, papers, and records of any employer or supposed employer or any licensee or supposed licensee in order to determine the accuracy of any return made, or, if no return was made, ascertain the amount of license fee imposed by the terms of this chapter. Such employer or supposed employer or licensee or supposed licensee is hereby directed and required to give to the Occupational Tax Administrator or her duly authorized agent or employee the means, facilities and opportunity for such examination and investigation as are hereby authorized. The Occupational Tax Administrator is hereby authorized to examine any person under oath concerning any wages, salaries, commissions or other compensation or net profits which were or should have been returned and to this end she may compel the production of books, papers, records and the attendance of all persons before her, whether as parties or witnesses whom she believes to have knowledge of such wages, salaries, commissions or other compensation or net profits, to the extent that any officer empowered to administer oaths in this Commonwealth is permitted to so order. If as a result of an investigation conducted by the

Occupational Tax Administrator a return is found to be incorrect, the Occupational Tax Administrator is authorized to assess and collect any underpayment of employee license fee withheld at the source or any underpayment of Occupational or Net Profit License Fee due by any licensee. If no return has been filed and an Occupational License Fee is found to be due the license fee actually due may be assessed and collected and penalties and interest added thereto.

SECTION 1.11 ONLY LAWFUL TAX IMPOSED

It is not the intention of the county by this chapter to impose and require an occupational license fee prohibited by law.

SECTION 1.12 INFORMATION CONFIDENTIAL

(A) All information obtained by the Occupational Tax Administrator or any of her agents or employees, or any other officials or employees of Pulaski County, from any reports, examination or audit of books, records, accounts, income tax returns or any other source, in the administration of this ordinance shall be treated and considered as confidential and privileged except for official purposes, unless otherwise treated by judicial degree of specific provisions of law, and shall not be open to inspection by the public. Any official, agent or employee of Pulaski County who divulges any information obtained under the provision of this ordinance, except for the purposes of administering this Ordinance as herein provided, shall be guilty of a misdemeanor and upon conviction, shall be fined not less than fifty dollars ($50.00) nor more than five hundred dollars ($500.00) or imprisonment for a period not to exceed twelve (12) months, or both.

(B) It is further provided that the Occupational Tax Administrator or any County Official or employee shall have the right to disclose to the Commissioner of Revenue of the

State of Kentucky, or his duly authorized agent or employee, provided reciprocal right to information concerning any person liable for license fees under the provisions of this ordinance is made available to the County by such State Authorities; and provided further that the County may publish statistics based upon information obtained in the administration of this Ordinance so long as such published statistics do not reveal the identity of any Licensee.

SECTION 1.13 CRIMINAL PENALTIES

It shall be unlawful for any person to engage in any business, trade, occupation or profession within Pulaski County without withholding, reporting and paying the license fees herein provided and required. Any person who violates any of the provisions of this ordinance, by failing to pay any license fee when due, or failing to withhold and pay any license fee when due, or failing to file any report or submit to any examination required by this ordinance, or in any other manner fails or refuses to comply with any of the terms or provisions of this Ordinance, shall be guilty of a misdemeanor and upon conviction shall be fined not less than fifty dollars ($50.00) nor more than five hundred dollars ($500.00) or imprisonment for a period not to exceed twelve (12) months or both. Such penalties shall be in addition to other penalties imposed by the Ordinance. Each failure or refusal to comply with any of the provisions of this Ordinance shall constitute a separate offense, and each day that such failure or refusal continues without compliance shall constitute a separate offense.

SECTION 1.14 SEVERABILITY

Each section and each provision of each section of this ordinance are severable, and if any provision, section, paragraph, sentence or part thereof, or the application thereof to any person licensee, class or group, be held unconstitutional or invalid for any reason, such holding shall

not affect or impair the remainder of this Ordinance, it being the legislative intent to ordain and enact each provision, section, paragraph, sentence and part thereof, separately and independently of every other.

This Amended and Re-adopted Ordinance shall be in full force and effect from and after its adoption.

This Amended Ordinance shall be published in full in the Commonwealth Journal, Somerset, Kentucky.

Introduced for the first reading on Motion made by Phillip McClendon and seconded by James Cothron and passed by majority of vote of the Pulaski County Fiscal Court in duly session assembled on the 13th day of February, 1996.

/s/ Illegible
PULASKI COUNTY JUDGE

ATTEST:

/s/ Illegible
PALASKI COUNTY COURT CLERK

Introduced for the second reading on Motion made by James Cothron and seconded by-Earl Hicks and passed by majority of vote of the Pulaski County Fiscal Court in duly session assembled on the 12th day of March, 1996.

/s/ Illegible
PALASKI COUNTY JUDGE EXECUTIVE

ATTEST:

/s/ Illegible
PALASKI COUNTY COURT CLERK